



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES**

August 4, 2016

Michael J. Eig
Michael J. Eig and Associates
5454 Wisconsin Avenue, Suite 760
Chevy Chase, Maryland 20815-6938

Dear Mr. Eig:

This letter responds to your December 17, 2015 correspondence to Melody Musgrove, former Director, Office of Special Education Programs (OSEP), U.S. Department of Education (Department). In that letter you requested guidance regarding a parent's right under Part B of the Individuals with Disabilities Education Act (IDEA) to open a due process hearing to the public pursuant to 34 CFR §300.512(c). Our responses to the specific questions raised in your correspondence are provided below.

Question 1: Are parents permitted to invite educational professionals or others not involved in their case but who are interested in learning more about due process proceedings?

Answer: Generally, if a parent chooses to exercise his or her right under 34 CFR §300.512(c)(2) to open the hearing to the public, the parent is permitted to invite educational professionals or others not involved in the case but who are interested in learning more about due process proceedings. In addition, under 34 CFR §300.512(a)(1), any party to a hearing conducted pursuant to 34 CFR §§300.507 through 300.513 or 300.530 through 300.534 (or in the case of States with a two-tier due process system, to an appeal conducted pursuant to 34 CFR §300.514), has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities. To the extent your questions are seeking clarification regarding whether a parent is permitted to invite observers who do not meet the criteria of 34 CFR §300.512(a)(1) to a due process hearing that the parent chooses not to open to the public under 34 CFR §300.512(c)(2), we believe that a parent may invite such individuals.

Although the IDEA does not specifically address your question, OSEP has previously explained that States may establish criteria for attendance by school district personnel who do not meet the requirements of 34 CFR §300.512(a)(1) at a due process hearing that is not open to the public. Such State-established criteria must be consistent with all other rights accorded to children with disabilities and their parents, including the confidentiality of information provisions in 34 CFR §§300.611 through 300.626 and the requirements of the Family Educational Rights and Privacy Act and its implementing regulations in 34 CFR part 99. See November 30, 2012 Letter to Gran available at: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-015702r-pa-gran-dph-11-30-12.pdf>. Similarly, OSEP believes that parents may invite individuals who do not meet the criteria in 34 CFR §300.512(a)(1) to observe their child's hearing without opening it to the

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-2600

www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

public. This could include inviting to such hearing a family member of the child or educational professionals or others not involved in the specific issues of the hearing but who are interested in learning more about due process proceedings or who are there to provide general support to the parent or child. In these situations, OSEP believes that it would be reasonable to expect that attendance at a hearing not open to the public should be limited to individuals who have some direct relationship to the parties and/or a personal need to understand the conduct of proceedings generally. We believe that permitting parents to invite observers, just as States may invite school district personnel in accordance with its established criteria, to observe a due process hearing not open to the public, is consistent with the principles of fairness and equity that are inherent in the due process procedures under the IDEA. Further, it is important to note that for both open and closed hearings, the IDEA requires that a hearing officer conduct a fair and impartial due process hearing. In carrying out this duty, a hearing officer may be able to remove any individual in attendance whose behavior is disruptive or otherwise interferes with conducting a fair and impartial hearing. See 34 CFR §300.511(c)(1)(iii).

Question 2: Can parents invite members of the press to observe the due process proceedings?

Answer: While there is nothing in the IDEA that would prevent parents from inviting members of the press to observe due process hearings for their child, inviting members of the press serving in their official capacity would require opening the hearing to the public. If the parents wish to invite press representatives to observe and report on the due process hearing for their child, the hearing would be open to the public because part or all of the information discussed in the proceedings will be disseminated to the public or otherwise published. In addition, members of the press are likely to record and publish personally identifiable information. Because, in the Department's view, inviting the press to observe and report is equivalent to inviting the public, it is clearly distinguishable from inviting family members or other educational professionals who have some direct relationship to the parties and/or a personal need to understand the conduct of proceedings generally. Therefore, we do not interpret the IDEA as permitting a parent to invite members of the press to observe and report on a due process hearing that is not otherwise open to the public.

Question 3: Do parents have the right to open the hearing to particular individuals they wish to invite to observe without opening the hearing to the public as a whole?

Answer: See our responses to Questions 1 and 2, which discuss the flexibility available to parents in these situations.

Question 4: Does the school system have a legal right to object to a parent's decision to open a due process hearing to the public?

Answer: No. There is nothing in the IDEA that limits a parent's right to open a due process hearing for his or her child to the public. 34 CFR §300.512(c)(2). Thus, the school does not have a legal right to contest a parent's decision to open the hearing to the public, and it would be inconsistent with the IDEA for a hearing officer to prohibit the exercise of this parental right. As noted above, in circumstances where a parent exercises his or her right to open a hearing for the child to the public, the IDEA requires that a hearing officer conduct a fair and impartial due process hearing. In carrying out this duty, a hearing officer may be able to remove any individual

in attendance whose behavior is disruptive or otherwise interferes with conducting a fair and impartial hearing. See 34 CFR §300.511(c)(1)(iii).

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the Department of the IDEA in the context of the specific facts presented.

If you have any further questions, please do not hesitate to contact Lisa Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs